

Federal Trade Commission

§ 23.3

one example and in more than one section of the guides. The examples provide the Commission's views on how reasonable consumers likely interpret certain claims. Industry members may use an alternative approach if the approach satisfies the requirements of Section 5 of the FTC Act. Whether a particular claim is deceptive will depend on the net impression of the advertisement, label, or other promotional material at issue. In addition, although many examples present specific claims and options for qualifying claims, the examples do not illustrate all permissible claims or qualifications under Section 5 of the FTC Act.

§ 23.1 Deception (general).

It is unfair or deceptive to misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

NOTE 1 TO § 23.1: If, in the sale or offering for sale of an industry product, any representation is made as to the grade assigned the product, the identity of the grading system used should be disclosed.

NOTE 2 TO § 23.1: To prevent deception, any qualifications or disclosures, such as those described in the guides, should be sufficiently clear and prominent. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

NOTE 3 TO § 23.1: An illustration or depiction of a diamond or other gemstone that portrays it in greater than its actual size may mislead consumers, unless a disclosure is made about the item's true size.

§ 23.2 Misuse of the terms "handmade," "hand-polished," etc.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product is handmade or hand-wrought unless the entire shaping and forming of such product from raw materials and its finishing and decoration were accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the construction, shape, design,

and finish of each part of each individual product.

NOTE TO PARAGRAPH (a): As used herein, "raw materials" include bulk sheet, strip, wire, precious metal clays, ingots, casting grain, and similar items that have not been cut, shaped, or formed into jewelry parts, semi-finished parts, or blanks.

(b) It is unfair or deceptive to represent, directly or by implication, that any industry product is hand-forged, hand-engraved, hand-finished, or hand-polished, or has been otherwise hand-processed, unless the operation described was accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the type, amount, and effect of such operation on each part of each individual product.

§ 23.3 Misrepresentation as to gold content.

(a) It is unfair or deceptive to misrepresent the presence of gold or gold alloy in an industry product, or the quantity or karat fineness of gold or gold alloy contained in the product, or the karat fineness, thickness, weight ratio, or manner of application of any gold or gold alloy plating, covering, or coating on any surface of an industry product or part thereof.

(b) The following are examples of markings or descriptions that may be misleading:²⁴

(1) Use of the word "Gold" or any abbreviation, without qualification, to describe all or part of an industry product, including the surface layer of a coated product, which is not composed throughout of fine (24 karat) gold.

(2) Use of the word "Gold" or any abbreviation to describe all or part of an industry product (including the surface layer of a coated product) composed throughout of an alloy of gold (*i.e.*, gold that is less than 24 karats), unless a correct designation of the karat fineness of the alloy immediately precedes the word "Gold" or its abbreviation, and such fineness designation is of at least equal conspicuousness.

(3) Use of the word "Gold" or any abbreviation to describe all or part of an

²⁴ See paragraph (c) of this section for examples of acceptable markings and descriptions.